

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

MT. DIABLO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2010061370

ORDER GRANTING DISTRICT'S
MOTION TO DISMISS STUDENT'S DUE
PROCESS COMPLAINT FOR FAILURE
TO PROSECUTE

On January 19, 2011, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Adeniyi Ayoade, Office of Administrative Hearings (OAH). Matthew Juhl-Darlington, Attorney at Law, appeared on behalf of the District. Parents did not appear.¹ The PHC was not recorded.

Based on discussion with the District's attorney, the ALJ issues the following order:

1. Motion to Dismiss: District moved to have Student's complaint dismissed because Parents did not file a PHC statement, or file a request for continuance as required by the OAH order dated January 13, 2011 (OAH order) following the January 12, 2011 PHC. District contends that, while it is prepared to defend the complaint, requiring it to prepare for the due process hearing that is currently scheduled for January 24, and 25, 2011 would significantly prejudice it, as it would have to expend significant resources in preparing a defense on a case that may not go forward, because Parents have not expressed a desire to participate in the PHC, or prosecute Student's case at the present time.

Parents did not comply with the OAH order. The order, which continued the PHC to January 19, 2011 at 1:30 p.m., directed Parents to file a PHC statement with OAH no later than close of business on Friday, January 14, 2011. Alternatively, the order provides that Parents may request a dismissal of the complaint or file a request for continuance if they are not prepared to proceed to a due process hearing at this time. Failure to comply with the order could lead to a dismissal of Student's complaint, according to the order.

¹ This PHC was rescheduled from January 12, 2011, because OAH was unable to reach Parents for that scheduled PHC. This PHC was scheduled to begin at 1:30 p.m., and the ALJ telephoned Parents' home telephone number and two cell phone numbers that Parents had previously provided to OAH. There was no answer, and messages were left at the numbers. Parents have not responded.

Parents did not file a PHC statement, or otherwise respond to the order in any manner. Further, and since the OAH order, and up till the present time, Parents have not contacted OAH to indicate their readiness to proceed to a due process hearing at this time or otherwise, or to request a continuance. They have not participated, or indicate a willingness to participate in a PHC or the scheduled due process hearing. Since Student has the initial burden of proof in this case, District may not be required to proceed without Parents.

Accordingly, District's motion to dismiss is granted. However, out of an abundance of caution and based upon the facts in this case, Parents may make a written request to set aside the dismissal. Parents' request must be filed with OAH no later than 5:00 p.m. on January 27, 2011, and establish good cause to set aside the dismissal.

ORDER

1. District's motion to dismiss Student's complaint is granted.
2. All dates in this matter are vacated.
3. Parents shall have until 5:00 p.m. on January 27, 2011, to file a written request to set aside the dismissal of this matter. The request must establish good cause why the dismissal should be set aside, in light of Parents' prior failure to prosecute this action.

IT IS SO ORDERED.

Dated: January 20, 2011

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings